



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

72

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,121	04/13/2001	Margaret M. Leahy	OSJ-002	4218
959	7590	03/31/2006	EXAMINER	
LAHIVE & COCKFIELD 28 STATE STREET BOSTON, MA 02109			COE, SUSAN D	
			ART UNIT	PAPER NUMBER
			1655	
DATE MAILED: 03/31/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/835,121

Applicant(s)

LEAHY ET AL.

Examiner

Susan D. Coe

Art Unit

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11,14,21-25 and 27-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11,14,21-25 and 27-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amendment filed January 27, 2006, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 26 and 33 have been cancelled.
3. Claims 11, 14, 21-25, and 27-32 are pending.
4. In Paper No. 5, applicant elected with traverse phenolic acid, specifically cinnamic acid for species D.
5. Claims 11, 14, and 21-33 are examined on the merits solely in regards to the elected species.

Claim Rejections - 35 USC § 102

6. Claims 11, 14, 21-25 and 27-32 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 5,320,861 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that US '861 does not teach a cranberry extract that is enriched in cinnamic acid. However, applicant's specification specifically states:

The term "Tomah presscake" refers to a particularly preferred presscake described in U.S. Patent Nos. 5,320,861 and 5,320,861 [sic] which contains **higher levels of desirable phytochemicals** than are present in presscake made via conventional methods. In particular, decharacterized cranberry fruit in the form of "Tomah presscake" contains higher levels of anthocyanins, **phenolic acids** and proanthocyanidins than that found in presscake produced through conventional methods...The term "**phenolic compound**" refers to...**cinnamic acid**...(see page 6, lines 3-8, 15 and 19, emphasis added)...

In order to determine what major components of the decharacterized cranberry of the invention contributed to the beneficial anticancer effects...a detailed analysis of the major components present in the decharacterized cranberry of the invention was performed. **The decharacterized cranberry of the invention is preferably prepared**

Art Unit: 1655

using the methods described in, e.g., U.S. Pat. Nos. 5,320,861; 5,419,251. The amount of major components such as anthocyanins, phenolics, and proanthocyanidins of a decharacterized cranberry prepared using these methods (the so-called "Tomah presscake") is surprisingly enriched over the levels of these compounds found in decharacterized cranberries [sic] prepared by conventional methods (see Table 12) (see page 42, lines 9-19, emphasis added).

Thus, applicant's specification clearly admits that the product of US '861 is the product analyzed by applicant and is the product found to be enriched in cinnamic acid. In fact, applicant's arguments point to Table 12 as supporting that the composition of US '861 is not enriched (see page 6, last paragraph). This argument is in direct contract to what is stated in the above quotation. The cranberry extract analyzed in Table 12 is prepared using the method set forth in US '861; thus, the extract analyzed in Table 12 is the same as the extract set forth in US '861. Therefore, US '861 clearly anticipates the claimed composition because applicant has repeatedly admitted on the record that the product of US '861 is the product used in the invention.

7. No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 1655


however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 9:30 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey, can be reached at (571) 272-0775. The official fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding can be directed to the receptionist whose telephone number is (571) 272-1600.


3-22-06

Susan D. Coe
Primary Examiner
Art Unit 1655